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FILED
DISTRICT COURT OF GUAM

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MARY L.M. MORAN
CLERK OF COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM**

17 Federal Rule of Criminal Procedure 6(e)(3)(C)(ii) allows the court to release grand jury
18 transcripts to the defense “upon a showing that grounds may exist for a motion to dismiss the
19 indictment because of matters occurring before the grand jury.” The defense must make a
20 particularized need for such a disclosure: “(1) that the desired material will avoid a possible
21 injustice, (2) that the need for disclosure is greater than the need for continued secrecy, and (3)
22 that only the relevant parts of the transcripts should be disclosed.” Douglas Oil Co. V. Petrol
23 Stops Northwest, 441 U.S. 221, 229 (1979). Defendant must provide evidence to support
24 whatever impropriety he claims occurred before the grand jury. United States v. Perez, 67 F.3d
25 1371, 1381 (9th Cir. 1995).

26 The only grounds defendant advances is that the government reputedly said it could rely

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1 upon the lesser standard of proof provided by 18 U.S.C. § 1623(c) because defendant made two
2 prior inconsistent statements, and perhaps this incorrect theory was propounded to the grand
3 jury. The transcript of the hearing where this statement is supposed to have been made, which
4 has been attached as Exhibit 1 to the government's response to defendant's motion to dismiss,
5 clearly reflects the government never said any such thing. Thus, defendant has failed to show
6 any particularized need for access to the grand jury transcripts.

7 Respectfully submitted this 12th day of July, 2007.

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